

CHAPTER 12 ENVIRONMENTAL SELF-AUDITS

567—12.1(455K) General.

12.1(1) Scope. This chapter sets forth rules governing voluntary disclosure of environmental non-compliance discovered as a result of an environmental self-audit conducted by or on behalf of a facility owner or operator under provisions of Iowa Code chapter 455K.

12.1(2) Definitions. As used in this chapter, the following terms shall have the following meanings:

“*Act*” means the environmental audit privilege and immunity Act, 1998 Iowa Acts, chapter 1109.

“*Department*” means the Iowa department of natural resources.

“*Disclosure of violation*” means the notice or disclosure made by a person to the department promptly upon discovery of a violation as a result of an environmental audit.

“*Environmental audit*” means a voluntary evaluation of a facility or operation, of an activity at a facility or operation, or of an environmental management system at a facility or operation, when the facility, operation, or activity is regulated under state or federal environmental laws, rules or permit conditions, conducted by an owner or operator, an employee of the owner or operator, or an independent contractor retained by an owner or operator that is designed to identify historical or current non-compliance with environmental laws, rules, ordinances, or permit conditions, discover environmental contamination or hazards, remedy noncompliance or improve compliance with environmental laws, or improve an environmental management system.

“*Environmental audit report*” means a document or set of documents generated and developed for the primary purpose and in the course of or as a result of conducting an environmental audit.

“*Notice of audit*” means the notice an owner or operator provides to the department before the owner or operator begins an environmental audit.

“*Owner or operator*” means the person or entity who caused the environmental audit to be undertaken.

“*Request for extension*” means a letter requesting an extension of the time period allowed for the completion of an environmental audit.

567—12.2(455K) Notice of audit. Owners or operators are not required to give the department notice of audit before beginning an environmental audit; however, they are encouraged to do so. Owners or operators may not be able to take advantage of immunity provisions under the Act if they fail to give notice to the department that they are planning to commence an environmental audit and the department initiates an inspection or investigation prior to the person’s filing a disclosure of violation with the department. If notice of audit is given to the department, the audit must be completed within a reasonable time not to exceed six calendar months from the date the notice of audit is received by the department unless a request for extension has been filed with and granted by the department.

12.2(1) If a notice of audit is provided to the department, it must be submitted in writing by certified mail. A notice of audit should include the following information:

- a.* The name of the facility to be audited;
- b.* The location of the facility to be audited (address and city);
- c.* The description of the facility or portion of the facility, activity, operation or management system to be audited, including applicable department permit and registration numbers;
- d.* The date of anticipated initiation of audit (day, month, and year);

e. The general scope of audit, with sufficient detail to enable a determination of whether subsequently discovered violations are included. If the scope of the audit changes before it is completed, an amended notice shall be submitted promptly after this fact becomes known;

f. The names of the persons conducting the audit; and

g. The anticipated date of completion of the audit not to exceed six calendar months.

12.2(2) If, after providing notice of audit, an owner or operator determines the audit will not be completed by the initial anticipated completion date but within six calendar months from the date of the original notice of audit, the owner or operator should provide the department a written amendment to the notice of audit with the revised anticipated completion date, not to exceed six calendar months from the date of the original notice of audit. Amendments to the anticipated date of completion should be filed with the department prior to the expiration of the original listed anticipated date of completion. If the anticipated date of completion will go beyond six calendar months from the date of the original notice of audit, the owner/operator must file a request for extension pursuant to rule 12.3(455K) of this chapter.

12.2(3) A notice of audit is not privileged information and is considered public information subject to provisions of state open records laws in Iowa Code chapter 22.

12.2(4) If a notice of audit is provided to the department, the department will provide written acknowledgment of receipt with an assigned identification number for reference and tracking purposes.

567—12.3(455K) Request for extension. If notice of audit is given to the department, the audit must be completed within a reasonable time not to exceed six calendar months from the date the notice of audit is received by the department unless a written request for extension has been filed with and granted by the department based on reasonable grounds. Owners or operators are cautioned that continuation of an audit after the initial six-month period without prior written approval from the department may limit the availability of immunity under the Act.

12.3(1) A request for extension must be filed in writing with the department at least 30 calendar days prior to expiration of the initial six-month period and provide sufficient information for the department to determine whether reasonable grounds exist to grant an extension. Written requests for extension must be sent by certified mail. Failure to provide sufficient information could result in delay of approval or denial of the extension, which could jeopardize availability of immunity under the Act.

12.3(2) The department will provide written determination either granting or denying the request for extension within 15 calendar days of receipt of the written request for extension.

12.3(3) Requests for extension will be considered as amendments to the notice of audit and as such will not be considered privileged information. Requests for extension will be considered public information subject to the provisions of state open records laws in Iowa Code chapter 22.

567—12.4(455K) Disclosure of violation. An owner or operator wishing to take advantage of the immunity provisions of the Act must make a prompt voluntary disclosure to the department regarding an environmental violation which is discovered through an environmental audit.

12.4(1) A disclosure will be deemed voluntary if the following conditions apply:

a. The disclosure arises out of an environmental audit and relates to information considered privileged under the Act;

b. The disclosure is not otherwise required by federal or state law, rule, permit condition, or an order issued by the department;

c. If no current notice of audit covering the facility, activity, operation or management system is on file with the department, the disclosure is made prior to a violation being independently detected by the department or the initiation of an inspection or investigation by the department;

d. The violation is identified and disclosed to the department before there is notice of a citizen suit or a legal complaint filed by a third party; or before it is reported to the department by any person not involved in conducting the environmental audit or to whom the environmental audit was disclosed;

e. The violation does not involve intentional violation of state or federal law, rule, or permit condition, or result in substantial actual injury or imminent and substantial risk of injury to persons, property, or the environment; and

f. The owner or operator making the disclosure uses reasonable efforts to pursue compliance and to correct the noncompliance within a reasonable period of time after completion of the audit in accordance with a remediation schedule submitted to and approved in writing by the department.

12.4(2) An owner or operator may not be able to take advantage of the immunities under the Act from administrative or civil penalties if:

a. Violations are intentional;

b. Violations resulted in substantial actual injury or imminent and substantial risk of injury to persons, property, or the environment;

c. Violations resulted in a substantial economic benefit which gives an owner or operator a clear advantage over business competitors; or

d. The owner or operator has been found to have committed serious violations that constitute a pattern of continuous or repeated violations or is classified as a habitual violator as set forth in Iowa Code section 455K.8(7).

12.4(3) A disclosure of violation must be sent to the department in writing by certified mail and include the following information:

a. Reference to the date of the relevant notice of audit and assigned reference number, if one was provided;

b. Time of initiation and completion of the audit, if applicable;

c. The names of the person or persons conducting the audit;

d. Affirmative assertion that a violation has been discovered;

e. Description of the violation discovered and reason for believing a violation exists;

f. Date of discovery of the violation and interim measures taken to abate the violation;

g. Duration of the violation if that can be determined; and

h. The status and schedule of proposed final corrective measures, if applicable.

12.4(4) A disclosure of violation is not an environmental audit report and is not privileged information under the Act. A disclosure of violation is public information subject to provisions of state open records laws in Iowa Code chapter 22. Owners or operators should not send copies of environmental audit reports to the department, unless specifically requested in writing by the department.

12.4(5) The department will acknowledge receipt of a disclosure of violation in writing which will include either concurrence or rejection of the proposed final corrective measures and schedule. This written acknowledgment will be sent to the owner or operator within 15 calendar days of receipt of the disclosure of violation.

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